

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

RENTAL UNIFORM SERVICE, INC.

Employer

and

Case 5-RC-14628

TEAMSTERS LOCAL 430, A/W INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

**SUPPLEMENTAL DECISION AND ORDER VACATING
FIRST ELECTION AND DIRECTION OF SECOND ELECTION**

On March 25, 1998, I directed an election in the above-captioned case among all full time and regular part-time service representatives, shuttle drivers and jumpers employed by the Employer at its facilities located in York and Hanover, Pennsylvania and Frederick, Maryland. There are approximately 22 service representatives and jumpers at the Hanover location, 14 at the York location and 14 at the Frederick location. Petitioner appealed my decision, arguing that a unit limited to the service representatives and drivers employed at the Hanover, Pennsylvania location was appropriate. Shortly before the scheduled election, the Board granted Petitioner's Request for Review. Pursuant to Section 102.67(b) of the Board's Rules and Regulations, Series 8, as amended, the election was conducted on April 23, 1998, as scheduled, but the ballots were segregated and impounded. Thereafter, on December 13, 1999, the Board reversed my unit determination, concluding that the single facility presumption of employees at the Hanover location had not been rebutted. The Petitioner also requested review of my inclusion of the shuttle drivers in the unit I deemed appropriate, but the Board affirmed my inclusion of the shuttle drivers.

The parties were requested to submit positions regarding the opening of the ballots insofar as they related to the Hanover facility. As noted above, the balloting was conducted as scheduled and the ballots were segregated according to location and then impounded. Petitioner asserts that the ballots for the Hanover facility should be opened and counted. The Employer submits that a new election should be held because (a) there has been a 25% turnover since the original election; (b) the election notice set forth a unit that differed substantially from the one that the Board deemed appropriate and that, in these circumstances, the voters were prevented from making an informed decision, citing, *inter alia*, NLRB v. Parsons School of Design, 793 F.2d 503 (2nd Cir. 1986); Hamilton Test Systems, New York, Inc. v. NLRB, 743 F.2d 136, 140 (2nd Cir. 1984); NLRB v. Beverly Health & Rehabilitation Services, 120 F.3d 262, 1997 WL 457524 (4th Cir.

Aug. 12, 1997); and (c) the character and scope of the unit has been significantly altered by the Board's post-election modification citing, inter alia, NLRB v. Lorimar Productions, 771 F.2d 1294, 1300 (9th Cir. 1985); Parsons School of Design, *supra*; Beverly Health & Rehabilitation Services, *supra*.

In the Hamilton, Lorimar and Parsons decisions referred to above, the reviewing courts set aside elections held during the pendency of requests for review. In each of these cases, the election notices advised the employees that they were voting in a broad unit that had been determined appropriate by the regional director. Later, the Board issued a decision in each of these cases that narrowed the scope of the unit and altered its character.

In Hamilton, the Second Circuit set aside a Board election which was conducted in a virtual facility-wide unit, where the Board later excluded two employee classifications, leaving a unit that was less than half the original size and that consisted of employees in the three lowest ranking of five employee categories. 743 F.2d 136, 142. In Lorimar, the Ninth Circuit set aside a Board election where the ultimate unit certified by the Board (eleven estimators) "differed substantially" in size and nature from the unit voted upon which involved seventeen employees. 771 F.2d 1294. In Parsons, where the reduction in the unit was approximately 10%, the Second Circuit noted that the nature of the change in the scope of the unit (the exclusion of full time faculty members from a pre-election unit of full time and part-time faculty members) was of special significance. 793 F.2d 503, 507-08.

Finally, in Beverly, a service and maintenance unit of approximately 80 employees included 19 LPN's. 120 F.3d 262, 1997 WL 457524, at *1. The election results showed 55 voting for the Union, 20 against and 3 nondeterminative challenged ballots. Id. Following motions for reconsideration, a hearing was held and the parties stipulated to the exclusion of LPN's as supervisors. 1997 WL 457524, at *2. The regional director concluded that a new election was needed. Id. The Board, reversing the regional director, noted (a) that the exclusion of the LPN's represented a numerical change that was not sufficient; (b) the scope and character of the unit had not changed to any significant extent, the unit remaining a service and maintenance unit and (c) removal of the LPN's votes, assuming all had voted for the union, would still leave a 19 vote winning margin. Id. at *2. The Court, looking at these same factors, concluded otherwise. Id. at *4. The Court noted, *inter alia*, that the exclusion of the LPN's had significantly changed the scope and character of the unit and further noted that "while a 20% increase in the size of the bargaining unit may not be likely to affect the other employees' votes, a 20% decrease may well have such an effect" for a smaller bargaining unit may be less attractive to employees because of reduced bargaining power." Id.

In the instant case, the composition of the unit, classification-wise, remained the same with the Board's post-election action on the Request for Review. However, on review, the Board found that the smaller unit was appropriate. Accordingly, the unit size was reduced to 22 employees from 50 employees – a reduction in the size of the unit by over 50%. Cases involving this issue, i.e., cases in which the Board grants a request for review and significantly alters the unit – appear to be relatively infrequent. The Board is charged with insuring that elections are held promptly. Thus, in these few cases in which

a request for review may culminate in a unit that that is significantly smaller than, and/or significantly different in character from, the one in which an election was directed, the direction of a new election, as in the circumstances herein, would appear to be warranted. In view of the foregoing, I am constrained to conclude that the election held on April 23, 1998, be vacated and that a new election be held in the unit found appropriate by the Board.

IT IS HEREBY ORDERED that the election conducted on April 23, 1998, be, and it hereby is, vacated and that the ballots cast therein be destroyed.

IT IS FURTHER ORDERED that a second election be conducted in the unit found appropriate by the Board in its decision in Rental Uniform Service, Inc., 330 NLRB No. 44 (1999).¹

ORDER

IT IS ORDERED that the petitions filed herein be, and they hereby are dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by December 30, 1999.

Dated January 3, 2000

/s/ LOUIS J. D'AMICO

Regional Director, Region 5

at Baltimore, MD



378-0120

¹ The unit found appropriate by the Board is as follows:

All full-time and regular part-time service representatives, shuttle drivers and jumpers employed by the Employer at its facility located at Hanover, Pennsylvania; excluding all other employees, office clerical employees, guards and supervisors as defined by the Act.